

April 13, 2004

Gary L. Schneider
Project Manager
CH2MHILL
4350 W. Cypress Street
Suite 600
Tampa, FL 33607

RE: REQUEST FOR ADVISORY OPINION 04-60

Dear Mr. Schneider:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on April 7, 2004 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding the team's ability to provide architectural and engineering services for Cargo Yard Improvements at the Port of Miami. The team members are CH2MHILL, Ludovicki and Orange, Ojito and Associates and Delta Surveyors.

In your request, you advised the Ethics Commission that the Seaport recently issued a Notice to Professional Consultants to provide architectural and engineering services for Cargo Yard Improvements at the Port of Miami. The scope of services will include but not be limited to the design and rehabilitation of cargo yard facilities, support infrastructure and ancillary services. The selected firm will also provide program monitoring services. Other projects may also be added to the scope of services.

The NTPC requires proposers to identify whether they or any of their sub-consultants, or members have participated in any way in

the development of previous Cargo Yard Improvements for the Seaport Department, including but not limited to, the scope of services identified for this project.

In a series of opinions, the Ethics Commission has opined that certain contractual arrangements create an inherent conflict of interest and should be determined prior to award. For example, a conflict exists if a contractor has overlapping responsibilities on different phases of the same project (i.e. AE on one phase of the project and serving as value engineer, CIS or CM partner on another phase of the project; supervisor or prime on one phase of the project and subcontractor on another or related phase or project). Further a conflict may exist if there are overlapping roles or responsibilities between two related contracts. These arrangements create conflict because they lead to disclosure of confidential information and impair independent judgment by the contractor in the performance of its contractual obligations.

CH2MHILL is currently providing Cargo Yard Improvement services to the Seaport. The current contract expires in March of 2005. CH2MHILL is currently working on cargo yard design to raise the elevation of the POMTOC cargo yard to meet the elevation of new Wharves 6 and 7.

Ludovicki and Orange is currently providing a project manager to oversee construction work. Delta Surveyors is currently performing survey work. The survey work includes verifying another firm's work and doing boundary surveys for a new fire station.

The Seaport anticipates that the scope of work under the new Cargo Yard Improvement contract will involve work in the Maersk, Seaboard and POMTOC cargo yards. Therefore, the scope of work under the existing Cargo Yard Improvements contract should not

conflict with the scope of work under the new Cargo Yard Improvements contract.

The Ethics Commission found that CH2MHILL and the other team members may perform architectural and engineering services related to Cargo Yard Improvements. However, in order to avoid any conflicts created by an overlap of responsibilities, if CH2M HILL is selected for the new Cargo yard Improvement contract, the work must involve work in different cargo yards than the work in the existing cargo yard improvement contract.

Ludovicki and Orange's construction manager may not provide oversight responsibilities related to cargo yard improvements if the team is awarded the contract.

Finally, the other team members do not have a conflict of interest in regard to the Cargo Yard Improvements contract.

This opinion construes the Miami-Dade Conflict of Interest and Code of Ethics ordinance only and is not applicable to any conflict under state law. Please contact the State of Florida Commission on Ethics if you have any questions regarding possible conflicts under state law.

If you have any questions regarding this opinion, please call the undersigned at (305) 579-2594 or Ardyth Walker, Staff General Counsel at (305) 350-0616.

Sincerely Yours,

ROBERT MEYERS
Executive Director

cc: Luisa Millan Donovan, CICC